

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 16 2006

NATIONWIDE MUTAL INSURANCE
COMPANY,

Plaintiff-counter-defendant -
Appellee,

v.

DAVID KERSH,

Defendant-counter-claimant -
Appellant.

No. 05-16714

CATHY A. GATTERSON, CLERK
U.S. COURT OF APPEALS

D.C. No. CV-04-00726-DAE/KSC
District of Hawaii,
Honolulu

ORDER

RECEIVED
CLERK U.S. DISTRICT COURT

MAR 20 2006

DISTRICT OF HAWAII

Before: WALLACE, LEAVY and BERZON, Circuit Judges

Appellant's petition for rehearing to set aside dismissal and en banc rehearing is construed as a motion for reconsideration of this court's November 28, 2005 order dismissing this appeal for lack of jurisdiction. So construed, the motion is granted and the appeal is reinstated. The November 28, 2005 order is vacated and appellee's motion to dismiss the appeal for lack of jurisdiction is denied. Appellant's motion to quash appellee's response to the motion for reconsideration, to supplement the record and to stay proceedings is denied. Appellant's request for a declaratory judgment is denied.

The court's records reflect that this case may be appropriate for summary

disposition under Ninth Circuit Rule 3-6 because the questions presented in the appeal are so insubstantial as to warrant further argument. *See* Fed. R. App. P. 3-6.

Within 21 days after the filing date of this order, appellant shall show cause why summary disposition is not appropriate. A response may be filed within 8 days after service of the memorandum.

If appellant does not comply with this order, this appeal will be automatically dismissed by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.